



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,348	09/12/2003	Kim Tempest	19467-00009	6748
22334	7590	06/03/2010	EXAMINER	
PETER F WEINBERG			FERNSTROM, KURT	
GIBSON DUNN AND CRUTCHER LLP				
SUITE 4200			ART UNIT	PAPER NUMBER
1801 CALIFORNIA STREET				3711
DENVER, CO 80202				
			MAIL DATE	DELIVERY MODE
			06/03/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KIM TEMPEST,
JON MCNAIR LEUPP,
CHARLES D. LOMBINO, and
MARION C. BIRON

Appeal 2009-011179
Application 10/661,348
Technology Center 3700

Before , DALE M. SHAW *Division 2 Support Administrator*

ORDER REMANDING APPEAL TO EXAMINER

This is a Director ordered remand under 37 C.F.R. § 41.35(c) for the matter identified below. Accordingly, the application is herewith being remanded to the Examiner.

This application was electronically received at the Board of Patent Appeals and Interferences on May 27, 2009. A Docketing Notice was mailed and Appeal 2009-011179 was assigned on June 4, 2009.

Appeal 2009-011179
Application 10/661,348

Claims 49-50 of the instant application contains functional language that may be indefinite under 35 U.S.C. § 112, 2nd paragraph. *See Ex Parte Rodriguez*, 2009 WL 3756279 (BPAI 2009) and *Aristocrat Techs. Austl. Pty. Ltd. v. It'l. Game Tech.*, 521 F.3d 1328 (Fed Cir. 2008). On September 2, 2008, the Deputy Commissioner for Patent Examination Policy, John J. Love, issued a memorandum entitled “Rejections under 35 U.S.C. 112, second paragraph, when examining means (or step) plus function claim limitations under 35 U.S.C. 112, sixth paragraph”, located at:

http://www.uspto.gov/web/offices/pac/dapp/opla/preognitice/section_112_6th_09_02_2008.pdf. Thus, there is a question as to whether claims 49-50 and the claims which depend upon this claim, meet the requirements of being definite under 35 U.S.C. § 112, 2nd paragraph.

Accordingly, it is

ORDERED that the application is remanded to the Examiner to determine if claims 49-50, meet the requirements of 35 U.S.C. § 112, 2nd paragraph.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

mev

PETER F WEINBERG
GIBSON DUNN AND CRUTCHER LLP
SUITE 4200
1801 CALIFORNIA STREET
DENVER CO 80202